UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ROLAND MCKINNEY,   )
)
      Petitioner,   )
)
    vs.   )   Case No. 4:10CV1814 JCH
)
JEAN JOHNSON,   )
)
      Respondent.   )

MEMORANDUM AND ORDER

This matter is before the Court on Missouri state prisoner Roland McKinney's pro se petition

for writ of habeas corpus pursuant to 28 U.S.C. § 2254, filed September 23, 2010. (ECF No. 1).

By way of background, on November 7, 2001, Petitioner pled guilty in the Circuit Court of St. Louis

City, Missouri, to one count of first degree drug trafficking, and one count of possession of a

controlled substance. On November 16, 2001, Petitioner was sentenced to twenty years imprisonment

on Count I, and one year imprisonment on Count II, said sentences to be served concurrently.

Petitioner was ordered to participate in the long term treatment program for cocaine dependents.

According to Petitioner, his plea bargain contained a provision that if he successfully completed the

long term substance abuse program set forth in Mo.Rev.Stat. § 217.362, he was to be released on

probation.

On July 14, 2003, Petitioner received a favorable report from a staff member at the Maryville

Treatment Center, recommending that he be released to probation on September 8, 2003. (ECF 8-1,

PP. 14-18). On September 4, 2003, however, another treatment center staff member issued a report

indicating Petitioner had been terminated from the long term drug program due to his "lack of

therapeutic gain, failure to internalize TC concepts, failure to change his behavior, and failure to

continue to be motivated in the program." (Id., PP. 12-13). Petitioner thus was no longer eligible for probation on September 8, 2003. (Id., PP. 11,13).

On or about November 24, 2003, Petitioner filed a petition for writ of habeas corpus in the Circuit Court of Texas County, Missouri, which was denied on December 19, 2003. (ECF No. 8, PP. 2-3). Petitioner's appeal of said denial, filed with the Missouri Court of Appeals on July 29, 2004, was denied on September 16, 2004. (ECF Nos. 8, 8-1, 8-2, P. 2). Petitioner next filed a petition for writ of mandamus with the Missouri Supreme Court, on January 29, 2010. (ECF No. 8-2, P. 1). The petition for writ of mandamus was denied on March 23, 2010. (Id.).

Petitioner is currently incarcerated at the Western Missouri Correctional Center in Cameron, Missouri. In the instant petition, filed September 23, 2010, Petitioner asserts his due process rights were violated, as he was not released on probation despite his successful completion of the long term drug treatment program. In her response, filed November 22, 2010, Respondent contends the petition should be dismissed either on the merits, or as untimely filed pursuant to 28 U.S.C. § 2244(d).

Upon consideration, the Court finds Petitioner's petition must be dismissed on the merits. The record before the Court clearly indicates Petitioner did not successfully complete the long term drug treatment program, but rather was terminated for poor performance. Under these circumstances, Petitioner was not entitled to probation, and so the claim raised in his § 2254 petition is without merit.[1]

Accordingly,

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[1] As further support for its ruling, the Court notes Petitioner's claim is time-barred under the provisions of 28 U.S.C. § 2244(d), as more than five years elapsed between the Missouri Court of Appeals' denial of Petitioner's habeas appeal and the filing of his mandamus action with the Missouri Supreme Court.

IT IS HEREBY ORDERED that Petitioner's Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (ECF No. 1) is **DISMISSED** with prejudice. A separate Order of Dismissal will accompany this Memorandum and Order.

IT IS FURTHER ORDERED that because Petitioner cannot make a substantial showing of the denial of a constitutional right, the Court will not issue a certificate of appealability. See Cox v. Norris, 133 F.3d 565, 569 (8th Cir. 1997), cert. denied, 525 U.S. 834 (1998).

Dated this ___15th___ day of September, 2011.

/s/Jean C. Hamilton
UNITED STATES DISTRICT JUDGE